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6 OPERATING ENGINEERS LOCAL UNION NO. 3 and JOHN BONILLA

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 FLORENCE M. DAVIS,) No. C-05-00221 MMC
12 Plaintiff,)
13 v.) PETITION THAT MAGISTRATE
14 OPERATING ENGINEERS LOCAL UNION) SPERO RECONSIDER HIS DECISION
NO. 3, JOHN BONILLA,) TO NOT EXCUSE DEFENDANT JOHN
15 Defendant.) BONILLA FROM APPEARING AT THE
SETTLEMENT CONFERENCE ON
APRIL 20, 2006, OR, IN THE
ALTERNATIVE, BONILLA BE
AVAILABLE TELEPHONICALLY /ORDER
16)
17) Date: April 20, 2006
18) Time: 9:30 a.m.
19) Dept: Courtroom A, 15th Fl.
Federal Bldg., 450 Golden Gate Ave.
San Francisco, CA

20 We were informed on April 11th, by Judge Spero's staff that the Judge denied Defendant's
21 Petition to excuse Bonilla from personally appearing at the April 20th settlement conference
22 hearing in the above-referenced matter. Defendant respectfully request the Judge reconsider this
23 decision or, in the alternative, the Judge allow Mr. Bonilla to be available via telephone.

24 There appears to be a misconception on the part of the Judge's staff about whether
25 Defendants agreed to the date of April 20th for the settlement conference. I have been involved in
26 this case and recall specifically that the Judge's staff forced April 20th on us as the date for the

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28 PETITION THAT MAGISTRATE SPERO RECONSIDER HIS DECISION TO NOT EXCUSE DEFENDANT
JOHN BONILLA FROM APPEARING AT THE SETTLEMENT CONFERENCE ON APRIL 20, 2006, OR, IN THE
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Case No. C-05-00221 MMC

1 settlement conference before we were able to confirm that Bonilla was available on April 20th.
 2 Indeed, we had previously told Judge Spero's staff that we were available May 8th and May 9th,
 3 but we were not certain that we were available April 20th. Nonetheless, the Judge's staff ordered
 4 the settlement conference occur on April 20th. By the time the Judge's Order arrived, we were
 5 notified that Defendant Bonilla was not available April 20th because he had a speaking
 6 engagement with the retirees of Local 3 out of state which had been scheduled months earlier.
 7 There had been a delay, because Mr. Bonilla's secretary was not in on the days that we called,
 8 which was why we were not able to get back to the Judge in the one to two days in which he
 9 requested a response.

10 Defendants had hoped that the court would dismiss Bonilla from the lawsuit pursuant to
 11 Defendants' summary judgment motion. But it became apparent on April 7, and eventually upon
 12 receipt of the court's Order on April 12, that the Court would not dismiss Bonilla individually from
 13 the lawsuit. Defendants had hoped that, should the court dismiss Bonilla, then there would be no
 14 need to petition the Magistrate Judge to excuse Bonilla from attendance of the settlement
 15 conference. Since Defendants' summary judgment motion was denied, we repetition the
 16 Magistrate Judge.

17 There will be sufficient representation on behalf of Defendants to conduct a meaningful
 18 settlement discussion on April 20th without the presence of John Bonilla. While he has remained
 19 as a named Defendant due to a quirk in the definition of "employer" under the FMLA, even if any
 20 liability were ever found, he would not pay a dime since any expenses he incurred in the
 21 performance of his job would, under California Labor Code § 2802, necessarily be reimbursed by
 22 Local 3. Defendants will be present with a representative from Local 3, a representative on behalf
 23 of Mr. Bonilla, and an in person insurance representative. Given this level of representation, and
 24 the apparent misunderstanding of the Judge's staff as to whether Defendants had agreed to April
 25 20th as an acceptable settlement conference date, we respectfully request the Judge reconsider his
 26 decision to deny Bonilla's request that he be excused from the April 20th settlement conference.

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28 PETITION THAT MAGISTRATE SPERO RECONSIDER HIS DECISION TO NOT EXCUSE DEFENDANT
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1 Alternatively, since we believe the court scheduled the April 20th settlement conference on
2 a day that was not convenient to Defendants, we request that Mr. Bonilla be immediately available
3 by phone, should there be a need to consult with him during the settlement conference. While he is
4 speaking at a retiree function on April 20th, we could arrange to make him available by phone,
5 should the need arise during the settlement conference.

For the above good cause, the court should excuse Bonilla from appearance at the settlement conference on April 20th. Alternatively, the court should allow Mr. Bonilla to be available by phone.

9 || Date: April 13, 2006

**WEINBERG, ROGER & ROSENFELD
A Professional Corporation**

By: /s/ Alan G. Crowley
ALAN G. CROWLEY
Attorneys for Defendants
Operating Engineers Local Union No. 3
and John Bonilla

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6 DATED: April 18, 2006

